

**Kevin R. Martin, SBN 176853**  
[kmartin@randicklaw.com](mailto:kmartin@randicklaw.com)  
**Patrick E. Guevara, SBN 202727**  
[pguevara@randicklaw.com](mailto:pguevara@randicklaw.com)  
**RANDICK O'DEA & TOOLIATOS, LLP**  
5000 Hopyard Road, Suite 400  
Pleasanton, California 94588  
Telephone: (925) 460-3700  
Facsimile: (925) 460-0969

Attorneys for Defendants, Counter Claimants and Third Party Claimants ROBERT E. ESTUPINIAN, GINNY ESTUPINIAN and MUTUAL VISION, LLC, and Defendants and Third Party Claimants MILLENNIUM REALTY GROUP, VESTA REVERSE 100, LLC, VESTA CAPITAL ADVISORS, LLC, EDMUNDO ESTUPINIAN, and HAYDEE ESTUPINIAN

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

VESTA STRATEGIES, LLC,  
Plaintiff,

vs.

ROBERT E. ESTUPINIAN, GINNY  
ESTUPINIAN, MUTUAL VISION, LLC,  
MILLENNIUM REALTY GROUP, VESTA  
REVERSE 100, LLC, VESTA CAPITAL  
ADVISORS, LLC, CAROL-ANN  
TOGNAZZINI, EDMUNDO ESTUPINIAN,  
and HAYDEE ESTUPINIAN,  
Defendants.

ROBERT E. ESTUPINIAN, GINNY  
ESTUPINIAN, and MUTUAL VISION,  
LLC, ,

Counter Claimants,

vs.

VESTA STRATEGIES, LLC, JOHN  
TERZAKIS, SINGLE SITE SOLUTIONS  
CORP., B&B SPARCO PROPERTIES,  
INC., and PETER YE,

Counter Defendants.

Case No.: C 07-06216 JW RS

**CASE MANAGEMENT STATEMENT**

ROBERT E. ESTUPINIAN, GINNY  
ESTUPINIAN, MUTUAL VISION, LLC,  
MILLENNIUM REALTY GROUP, VESTA  
REVERSE 100, LLC, VESTA CAPITAL  
ADVISORS, LLC, EDMUNDO  
ESTUPINIAN, and HAYDEE  
ESTUPINIAN,

Third Party Claimants,

vs.

JOHN TERZAKIS, SINGLE SITE  
SOLUTIONS CORP., B&B SPARCO  
PROPERTIES, INC., and PETER YE,

Third Party Defendants.

Pursuant to Civil Local Rule 16-9, counsel for Defendants, Counter Claimants and Third Party Claimants ROBERT E. ESTUPINIAN, GINNY ESTUPINIAN and MUTUAL VISION, LLC, and Defendants and Third Party Claimants MILLENNIUM REALTY GROUP, VESTA REVERSE 100, LLC, VESTA CAPITAL ADVISORS, LLC, EDMUNDO ESTUPINIAN, and HAYDEE ESTUPINIAN (collectively “the Estupinian Defendants”) hereby submit the following Case Management Conference Statement. The Estupinian Defendants are submitting this separate statement because Plaintiff and Counter Defendant Vesta Strategies, LLC and Third Party Defendants Single Site Solutions Corporation and B&B Sparco Properties are not represented by counsel, and John Terzakis has not filed notice of pro per status. Third Party Defendant Peter Ye is represented by counsel Alan Martini, and Carol-Ann Tognazzini is acting in pro per.

# **1. JURISDICTION AND SERVICE**

This Court has subject matter jurisdiction over Plaintiff’s claims against the defendants pursuant to 28 U.S.C. §1331, 28 U.S.C. §1367, and 18 U.S.C. §1964 because Plaintiff has asserted federal causes of action under the RICO statute and the Court has supplemental jurisdiction over plaintiff’s state law claims.

Defendants/Counter Claimants/Third Party Claimants Mutual Vision, LLC, Robert

1 Estupinian, and Ginny Estupinian have filed counterclaims against Vesta Strategies, LLC and  
2 counterclaims and third party claims against John Terzakis, Single Site Solutions Corporation,  
3 and B&B Sparco Properties. The Court has jurisdiction in this matter pursuant to 28 U.S.C.  
4 §1331 and F.R.C.P. 13, 14, 19, and 20 because the Estupinians have asserted federal causes of  
5 action and the Court has supplemental jurisdiction over the state law claims, and that the third  
6 party claims are allowed under the joinder provisions of and the impleader provisions of Rule  
7 14(a). Vesta Strategies, LLC and the Third Party Defendants have filed demurrers and/or motion  
8 to strike as to the claims asserted against them which is scheduled for hearing on September 15,  
9 2008.

10 The parties are not currently aware of any issues regarding personal jurisdiction or venue.  
11 There are no parties that remain to be served.

12 **2. FACTS**

13 Vesta Strategies, LLC was formed in January 2004. Vesta Strategies is a qualified  
14 intermediary for Section 1031 tax-deferred real estate exchanges. Mutual Vision, LLC was the  
15 49% member of Vesta Strategies at all relevant times. Robert Estupinian and Ginny Estupinian  
16 are the members of Mutual Vision, LLC. Robert Estupinian was also the CEO of Vesta  
17 Strategies until his employment with Vesta Strategies was terminated on December 3, 2007.  
18 John Terzakis was the 51% member and manager of Vesta Strategies at all relevant times. It is  
19 unclear at this time whether Vesta Strategies, LLC is still an operating business entity.

20 The Estupinians contend that the Third Party Defendants are responsible for any losses to  
21 Vesta Strategies, LLC, sought under the Complaint, and that John Terzakis, Peter Ye, and  
22 Terzakis' other business interests mismanaged and misused Vesta Strategies, LLC causing the  
23 Estupinians and Mutual Vision, LLC millions of dollars in damage. They contend that, together  
24 Terzakis, Ye, Single Site Solutions Corporation, and B&B Sparco made unlawful distributions,  
25 thwarted business of the company, and then when confronted by the Estupinians, threatened and  
26 wrongfully terminated them.

1 **FACTUAL ISSUES IN DISPUTE**

2 Based on the pleadings to date, the principal factual issues in dispute include, without  
3 limitation:

- 4 1. Whether Vesta Strategies' funds were wrongfully distributed and if so, by whom.
- 5 2. Whether John Terzakis mismanaged and misused Vesta Strategies.
- 6 3. Whether the Estupinians were threatened or intimidated and wrongfully  
7 terminated.
- 8 4. Whether Single Site Solutions, B&B Sparco and Ye assisted Terzakis in the  
9 wrongful distribution and use of Vesta Strategies funds.
- 10 5. Whether Vesta Strategies, Terzakis, and Ye intentionally inflicted harm upon the  
11 Estupinians.
- 12 6. Whether the Estupinians wrongfully took funds from Vesta Strategies.

13 3. **LEGAL ISSUES**

14 Based on the pleadings to date, the principal legal issues in this case include, without  
15 limitation:

- 16 1. Whether Terzakis, Ye, Single Site Solutions and B&B Sparco were involved in  
17 racketeering activities towards Vesta Strategies, Mutual Vision, LLC or the  
18 Estupinians.
- 19 2. Whether Single Site Solutions owed a duty of care towards Mutual Vision, LLC  
20 and/or the Estupinians in connection with its accounting duties.
- 21 3. Whether Mutual Vision, LLC can seek an accounting from Vesta Strategies  
22 and/or Terzakis.

23 4. **MOTIONS**

24 The following motions are currently pending before the Court:

- 25 a. Plaintiff/Counter Defendant Vesta Strategies, LLC's Motion to Dismiss  
26 the Estupinians' counterclaim;
- 27 b. Third Party Defendant John Terzakis' Special Motion to Strike Pursuant to the  
28

1 California Anti-SLAPP Statute;

- 2 c. Third Party Defendants John Terzakis', Single Site Solutions Corporation's, B&B  
3 Sparco Properties, Inc., and Peter Ye's Motion to Dismiss or Strike the  
4 Estupinians' third party claims;
- 5 d. Plaintiff/Counter Defendants Vesta Strategies, LLC's and Third Party Defendants  
6 John Terzakis' Special Motion to Strike Pursuant to the California Anti-SLAPP  
7 Statute and for Attorneys' Fees and Costs relating to Tognazzini's libel and  
8 slander claim;
- 9 e. Plaintiff/Counter Defendant Vesta Strategies, LLC's and Third Party Defendant  
10 John Terzakis' Motion to Dismiss Tognazzini's counterclaims and third party  
11 claims; and
- 12 f. Defendants, Counterclaimants and Third Party claimants Robert E. Estupinian  
13 and Ginny Estupinian's Motion to Compel moving parties tax and financial  
14 records of Vesta Strategies, LLC, and to pay moving parties attorneys' fees.

15 Briefing is complete on these motions. The motions relating to the Estupinians'  
16 counterclaim and third party claims are currently scheduled for hearing on September 15, 2008.  
17 The motions relating to Tognazzini's counterclaims and third party claims are currently  
18 scheduled for hearing on September 15, 2008. The motions relating to Tognazzini's  
19 counterclaims and third party claims are currently scheduled for hearing on September 15, 2008.  
20 The motion of Robert and Ginny Estupinian for production of tax and financial records is  
21 currently scheduled for hearing on September 15, 2008.

22 The Estupinian Defendants anticipate that motions for default against the corporate  
23 entities, and/or summary judgment, motions *in limine*, and other potential motions may be filed  
24 in the future.

25 **5. EVIDENCE PRESERVATION**

26 The Estupinian Defendants have taken reasonable steps to preserve evidence relevant to  
27 the issues reasonably evident in this action. It is unknown whether Vesta Strategies, LLC and  
28

1 the other parties in this matter have preserved evidence.

2 6. **DISCLOSURES**

3 Pursuant to the Court's December 7, 2007, Order Setting Initial Case Management  
4 Conference and ADR Deadlines, the parties served their initial discovery items. The documents  
5 identified in Vesta Strategies, LLC initial disclosure have been requested by the Estupinian  
6 Defendants but have not been produced.

7 7. **DISCOVERY**

8 The only discovery taken in this case to date has been the depositions of Robert  
9 Estupinian and Ginny Estupinian on limited topics relating to their conduct concerning Vesta  
10 Strategies, LLC's computers and documents, as ordered by the Court at the hearing on December  
11 18, 2008.

12 The Estupinian Defendants have sent substantial written discovery to Vesta Strategies,  
13 LLC which has gone unanswered.

14 8. **CLASS ACTIONS**

15 Not applicable.

16 9. **RELATED CASES**

17 Not applicable.

18 10. **RELIEF**

19 The Estupinian Defendants seek the following relief through their counterclaims and  
20 third party claims: (1) money damages in the amount to be determined at trial; (2) treble  
21 damages; (3) punitive damages; (4) injunctive relief; (5) imposition of a constructive trust on all  
22 monies of Vesta Strategies, LLC wrongfully received and retained by counter defendants; (6) a  
23 full and complete accounting at the expense of the counter defendants; (7) declaratory relief; (8)  
24 reasonable attorneys' fees and costs; and (9) any further relief as this Court deems appropriate.  
25 Given that Vesta Strategies, LLC and the other parties are no longer represented by counsel, it is  
26 unclear what relief they seek.

11. **SETTLEMENT AND ADR**

Some of the parties have discussed settlement. The parties do not yet appear to be in a position to settle. The Estupinian Defendants believe that at least some discovery, including the exchange of documents and other written discovery and potentially depositions, are needed to put the parties in a position to potentially negotiate a resolution.

12. **CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

The Estupinian Defendants do not consent to a magistrate judge for all purposes.

13. **OTHER REFERENCES**

Not applicable.

14. **NARROWING OF ISSUES**

The Estupinian Defendants believe it is currently premature to narrow the issues in this case by agreement or by motion. They remain open to discuss possible ways to narrow the issues as the case proceeds.

15. **EXPEDITED SCHEDULE**

The Estupinian Defendants do not currently believe that this is the type of case that can be handled on an expedited basis without streamlined procedures.

16. **SCHEDULING**

The parties had previously agreed upon the following proposed dates and discovery plan pursuant to Federal Rule of Civil Procedure 26(f) and the Estupinian Defendants are prepared to proceed thereon:

DEADLINE OR EVENT	AGREED DATE
Last day to file 26(f) Report, complete initial disclosures and file Joint Case Management Statement	September 2, 2008
Initial Case Management Conference	September 15, 2008
Deadline for amending pleadings	? _____
Fact discovery cut-off ( <i>i.e.</i> , per Local Rule 26-2, the date by which all responses to written discovery are due and by which all depositions must be concluded)	November 14, 2008
Disclosure of expert reports	December 12, 2008

1		
2	Expert discovery cut-off	February 13, 2009
3	Deadline for filing dispositive motions and <i>Daubert</i> motions	March 13, 2009
4	Deadline for filing responses in opposition to any dispositive motions or <i>Daubert</i> motions	April 10, 2009
5	Deadline for filing replies in support of any dispositive motions or <i>Daubert</i> motions	May 1, 2009
6		
7	Proposed date for a hearing on any dispositive motions or <i>Daubert</i> motions	May 11, 2009
8	Proposed date for final pretrial conference	Mid-June 2009
9	Proposed date for trial [estimated 10 days]	July 2009
10		

11 17. **TRIAL**

12 This case will be tried to a jury on all issues so triable. The parties currently expect the  
13 trial to last approximately 10 days.

14 18. **DISCLOSURE OF NON-PARTY ENTITIES OR PERSONS**

15 As of the filing of this report, Robert Estupinian, Ginny Estupinian, Mutual Vision, LLC,  
16 Millennium Realty Group, Vesta Reverse 100, LLC, Vesta Capital Advisors, LLC, Edmundo  
17 Estupinian, Haydee Estupinian, and Carol-Ann Tognazzini have each filed a “Certification of  
18 Interested Entities or Persons.”



19. **OTHER MATTERS**

The Estupinian Defendants are not currently aware of any other matters that may facilitate the just, speedy and inexpensive disposition of this matter. The parties will discuss possible ways to facilitate the just, speedy and inexpensive disposition of this matter as the case proceeds.

Date: September 2, 2008

RANDICK O'DEA & TOOLIATOS, LLP

By:                     /s/                      
Kevin R. Martin